

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

In re: ) Case No. 20-22156-B-11  
 )  
EURISKO DEVELOPMENT LLC, ) DC No. KWY-2  
 )  
 )  
 )  
Debtor(s). )  
 )

**ORDER DENYING AS MOOT MOTION FOR RELIEF FROM AUTOMATIC STAY**

## Introduction

The court has before it a *Motion for "In Rem" Relief From Automatic Stay* filed by creditor Kenny Kwong ("Kwong"). The motion requests relief from the automatic stay of 11 U.S.C. § 362(a) pursuant to 11 U.S.C. § 362(d)(4). For the reasons explained below, the motion will be denied as moot.

The motion is not opposed. However, the absence of an opposition does not necessarily mean that a motion will automatically be granted. Rivas-Almendarez v. Holder, 362 Fed. Appx. 606 (9th Cir. 2010). Even an unopposed motion must have merit and there must be a basis for the court to grant the relief requested. See generally, In re Bassett, 2019 WL 993302, \*5 (Bankr. E.D. Cal. 2019).

The court has reviewed the motion and its related declaration and exhibits. The court has also reviewed and takes judicial notice of the docket in this case. See Fed. R. Evid. 201(c)(1).

The court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due

1 COVID-19 pandemic and further ordering that all civil matters are  
2 to be decided on the papers unless the presiding judge determines  
3 a hearing is necessary). The court has also determined that oral  
4 argument will not assist in the decision-making process or  
5 resolution of the motion. See Local Bankr. R. 9014-1(h),  
6 1001-1(f). The hearing on June 2, 2020, at 9:30 a.m. will be  
7 vacated.

8 Findings of fact and conclusions of law are set forth below.

9 See Fed. R. Civ. P. 52(a); Fed. R. Bankr. P. 7052.

10 Background

11 The motion concerns real property located at 9 La Noria,  
12 Orinda, California ("Orinda Property"). Docket 11 at 2:7-8.  
13 When the motion was filed, Eurisko Development, LLC ("Eurisko")  
14 owned the Orinda Property subject to Kwong's second deed of  
15 trust. Id. at 2:5-18. After this case was dismissed on May 12,  
16 2020, Docket 34, Kwong foreclosed on the Orinda Property on May  
17 13, 2020. Docket 46 at 2:2-3,  
18

19 Discussion

20 Dismissal of a bankruptcy case does not necessarily moot a  
21 request for relief under § 362(d) (4). See Benzeen, Inc. v. JP  
22 Morgan Chase Bank (In re Benzeen, Inc.), 2018 WL 6627275, \*4 (9th  
23 Cir. BAP 2018) (noting that request for § 362(d) (4) relief  
24 survives dismissal); see also Azkam v. U.S. Bank N.A., 2020 WL  
25 1700028, \*3 (E.D. Cal. 2020) ("An order granting relief under [§  
26 362(d) (4)] may survive the dismissal of the bankruptcy in some  
27 cases."). Here, however, events subsequent to dismissal have  
28

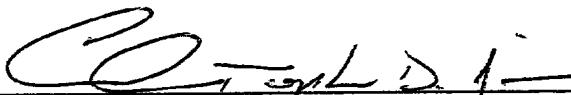
1 mooted Kwong's request for § 362(d)(4) relief.

2       Section 362(d)(4) permits the court to grant relief "with  
3 respect to a stay of an act against real property under  
4 subsection (a), by a creditor whose claim is secured by an  
5 interest in such real property[.]" 11 U.S.C. § 362(d)(4)  
6 (emphasis added). Since Kwong foreclosed on the deed of trust he  
7 held on the Orinda Property the day after this case was  
8 dismissed, Kwong is no longer "a creditor whose claim is secured  
9 by an interest in such real property[.]" Therefore,

10       IT IS HEREBY ORDERED that the motion for relief from the  
11 automatic stay filed on April 23, 2020, at Docket 9, is denied as  
12 moot.

13       IT IS FURTHER ORDERED that the hearing on June 2, 2020, at  
14 9:30 a.m. is vacated.

15  
16 **Dated:** May 28, 2020

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19 Christopher D. Jaime, Judge  
20 United States Bankruptcy Court  
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**INSTRUCTIONS TO CLERK OF COURT  
SERVICE LIST**

The Clerk of Court is instructed to send the attached document, via the BNC, to the following parties:

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